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IN THE

Supreme Court of the United States

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JAMES ALEXANDER,
DIRECTOR, ALABAMA DEPT. OF PUBLIC SAFETY, *et al.*,
Petitioners,

v.

MARTHA SANDOVAL,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

BRIEF OF AMICUS CURIAE EAGLE FORUM EDUCATION & LEGAL DEFENSE FUND IN SUPPORT OF PETITIONERS

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BRIEF OF AMICUS CURIAE EAGLE FORUM EDUCATION & LEGAL DEFENSE FUND IN SUPPORT OF PETITIONERS

INTEREST OF AMICUS CURIAE[1]

Eagle Forum Education & Legal Defense Fund ("Eagle Forum ELDF") is an Illinois nonprofit corporation organized in 1981. Eagle Forum ELDF's mission is to enable conservative and pro-family men and women to participate individually and collectively in the process of self-government and public

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[1] This brief is filed with the written consent of all parties. No counsel for a party authored this brief in whole or in part, nor did any person or entity, other than amicus, its members, or its counsel make a monetary contribution to the preparation or submission of this brief.

policy making so that America will continue to be a land of individual liberty, respect for family integrity, public and private virtue, and private enterprise. In particular, Eagle Forum ELDF defends the Constitution and its language against modification by any mechanism other than the amendment or convention procedures.

SUMMARY OF ARGUMENT

Must the State of Alabama speak in a language other than English? Although this issue is simply restated, its ramifications are unbounded.

This Court squarely rejected, in *Employment Div. v. Smith*, *infra*, the argument that religious practices require exemptions from generally applicable laws. Demands for exemption from official use of language, in the context of a state-conferred privilege, must likewise fail. The holding of the court below, if affirmed, would eviscerate the *Employment Div.* precedent and thereby require revisiting the issue of whether religious practices associated with national origin are entitled to exemptions from generally applicable laws.

Moreover, neither the Constitution nor its implementing legislation requires official use of any language other than English. The Constitution itself cannot be translated, in a binding manner, into any other language without complying with the amendment or convention procedures, because translation necessarily involves changes in meaning. There can be no "separate but equal" languages for developing law under the Constitution. Neither Congress nor the States, acting individually, can create a separate language for developing or implementing laws that impact the constitutional rights of the citizenry.

Finally, the Constitution disfavors language balkanization for the reason that it encourages secession. The former promotes the latter, as the Quebec controversy demonstrates, and

any statutory ambiguities in this area must be construed against language balkanization.

ARGUMENT

The Constitution does not require exemptions for language from generally applicable laws. Part I explains that the decision below is contrary to Supreme Court precedent establishing that exemptions from generally applicable laws are not required for religious practices. Under this precedent, exemptions for language are likewise not required, regardless of association with national origin. Part II emphasizes that neither the Constitution nor implementing legislation can require official use of any language other than English.

I. The Constitution Does Not Require Exemptions for Language from Generally Applicable Laws Under *Employment Div. v. Smith.*

Conceptually, plaintiffs' argument for an exception from a generally applicable law here is no different from an issue this Court resolved a decade ago. *Employment Div. v. Smith*, 494 U.S. 872 (1990). There the State of Oregon enacted a generally applicable law that had a disparate impact on a religious practice of individuals of a certain national origin.[2] Here, the State of Alabama enacted a generally applicable law that arguably has a disparate impact on language used by individuals of certain national origins. Neither the law of Oregon nor of Alabama entailed intentional discrimination. In both cases, the issue was whether the State must create exceptions to its generally applicable law in order to alleviate

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[2] In *Employment Div. v. Smith*, the Court considered application of the First and Fourteenth Amendments to require an exemption from a generally applicable law, while here the Court considers application of implementing legislation under the Fourteenth Amendment to require an exemption from a generally applicable law.

certain disparate impacts on individuals of certain national origins.

As this Court held in *Employment Div. v. Smith*, a State need not create exceptions to generally applicable laws for the practices of individuals. Language practices, like religious practices, are not exempt from such laws. Just as society need not and cannot treat all customs as equal, government need not and cannot accommodate or allow all languages in all official circumstances. The licensing of air traffic controllers at O'Hare Airport in Chicago, for example, does not and should not treat all languages equally. The English language is clearly preferable for that purpose. Similarly, a State judge does not have the right (or duty) to publish opinions in a language other than English. The State need not accommodate individual language preferences as exceptions to its generally applicable laws, just as it need not accommodate customs associated with individuals of certain national origins.

Languages develop in a manner similar to customs, and are cherished in similar ways. Both are as varied as the world population itself, and often have correlations with national origin. Both sometimes conflict with generally applicable laws. When there is conflict, States have no obligation to create exceptions for languages to generally applicable law.

A. The *Employment Div. v. Smith* Rule Should Apply to Language as Well as to Religious Practice

While the State must view all men as equal, it cannot view all languages and customs as equal. Generally applicable laws prohibiting drug use need not be riddled with exceptions. Likewise, laws mandating the use of the English language by air traffic controllers are essential to public safety. Generally applicable laws about licensing motor vehicle drivers are valid as well.

This Court established the standard of review for state legislation impacting certain religious practices in *Employment Div. v. Smith, supra*. At issue there was a Native American religious practice of ingesting peyote, a hallucinogenic drug. The State of Oregon prohibited use of this drug. When the Respondents Smith and Black were fired from their state jobs for using peyote at a Native American ceremony, their unemployment benefits were denied. The Oregon Supreme Court held that Smith and Black had a protected constitutional right to the ceremonial use of peyote.

In a 6-3 decision, this Court reversed. Individuals are not entitled to exceptions from generally applicable laws, even if those laws conflict with the religion of the individual. "We have never held that an individual's religious beliefs excuse him from compliance with an otherwise valid law prohibiting conduct that the State is free to regulate." 494 U.S. at 878-79. True for religious practices, this must be true for language preferences as well. Generally applicable regulations – particularly with respect to State-conferred privileges – cannot be riddled with exceptions based on individual religious practices. "It may fairly be said that leaving accommodation to the political process will place at a relative disadvantage those religious practices that are not widely engaged in; but that unavoidable consequence of democratic government must be preferred to a system in which each conscience is a law unto itself or in which judges weigh the social importance of all laws against the centrality of all religious beliefs." *Id.* at 890.

This holding applies with even greater force to legislation concerning the language of official state documents, which does not even implicate the First Amendment. Although languages, like customs, are often dearly cherished, it is "the unavoidable consequence of democratic government" that legislation will operate to disfavor certain languages and customs. The State has no obligation to extend benefits to those engaging in religious practices prohibited by law; *a*

fortiori, the State has no duty to provide licensing tests in languages other than the official language.

B. If Some Exceptions are Required to a Generally Applicable Law Concerning the Official Language, Then Countless Additional Exceptions Will be Necessary.

Under the decision of the court below, there is no limit to the accommodations that Alabama would have to make for other languages on its licensing tests. The decision could require Alabama to rewrite its driver's license test in every language of the world in order to accommodate every future applicant. "Four to five thousand languages are thought to be in current use. This figure is almost certainly on the low side." George Steiner, *After Babel: Aspects of Language and Translation* 53 (3d ed. 1998). This would create an enormous bureaucratic burden for Alabama, and a legal quagmire as to where, if at all, a limit can be imposed on translating the test into a different language.

This slippery slope also extends across licensing subject matter. If driver's license tests must be provided in multiple languages, so should other licensing tests administered by the State. Should a physician be able to demand that a medical licensing test be provided to him in a foreign language? Can an attorney demand that a state bar exam be in a foreign language? Likewise for electricians, mechanics, accountants, engineers, barbers, and numerous other licensed practitioners?

Worse, this slippery slope cannot be limited to exemptions for language. Customs and practices associated with national origin must also be exempt. The holding of the court below requires a State to modify generally applicable laws to use "comparably effective alternative practice which would result in less disproportionality" in impact on a group protected by Title VI. *Sandoval v. Hagan*, 197 F.3d 484, 507 (11th Cir. 1999) (quoting *Elston v. Talladega County Bd. of Educ.*, 997

F.2d 1394, 1407 (11th Cir.1993)). It is impossible to limit the holding below to language, and it must extend to various practices as well – including the alleged right to ingest peyote that was rejected in *Employment Div. v. Smith.*

The court below erred in holding that, because Alabama recognizes driver's licenses from other states, some of which have other language requirements, it must relax its own testing requirements. *See* 197 F.3d at 508 ("The court also found that licensed drivers from other states and countries were able to obtain an Alabama driver's license without having to take the Department's written exam – irrespective of their fluency in the English language. These factual findings demonstrate that Appellants' policy significantly impacts Alabama residents of foreign descent, in both an adverse and disproportionate manner."). The extension of full faith and credit by Alabama to the licenses of other states does not require Alabama to imitate the relaxed licensing requirements of others. State law is replete with examples, from marriage to divorce, of states recognizing determinations by other states without imitating the standards of those other states.

C. Alabama's Selection of English as the Language for Testing Drivers is Clearly Justified.

English is the most widely used language in the world outside of China, an important consideration for situations in dealing with strangers. English features a syntax that easily adapts to the style of the speaker, who can use nouns as verbs and vice-versa and still be understood. Because the forms of English words have comparatively little variance depending on usage, basic English can be learned more quickly than other languages. If one simply strings together English nouns and verbs in their most elemental form, a listener is likely to understand, in contrast to the confusion caused in most other languages. Certain Asian languages even have different

meanings for words depending on the spoken pitch, creating a potential for confusion by novices.

"Land plane now?" is a question that would be dangerous if misunderstood. The best way to minimize misunderstandings for traffic-related statements is to require that licensed pilots and air traffic controllers understand English – which is what non-English-speaking countries around the world are now requiring. The New York City Bar Association has recommended mandatory English, citing this example:

> In 1993, Chinese pilots flying a U.S.-made MD-80 were attempting to land in northwest China. The pilots were baffled by an audio alarm from the plane's ground proximity warning system. A cockpit recorder picked up the pilot's last words: "What does 'pull up' mean?" What is needed, both in the U.S. and worldwide, is a mandatory spoken English test for pilots and controllers.

"Aeronautics Committee of New York City's Bar Association Seeks to Raise the Bar on Safety", 12 Air Safety Week, at 33 (Aug. 17, 1998).

Other examples abound. The well-publicized crash of ValuJet Flight 592 in the Florida Everglades in 1996, killing all 110 on board, was caused by mistakenly loading oxygen canisters as cargo. The investigation revealed that the canisters labeled as "repairable" had been misunderstood as "empty", and at one point the National Transportation Safety Board suggested that the use of non-English speaking mechanics may have been a problem. William Langewiesche, *"The Lessons of ValuJet 592"*, 281 Atlantic Monthly No. 3, 81 (Mar. 1998).

With respect to the worst air disaster of all-time – the crash of a KLM 747-200 into a Pan Am 747-100 in Tenerife, Canary Islands in 1977 – the official report found that "inadequate language" was a cause. The KLM pilot used the

phrase "we are now at take-off" when he meant to state that he was now taking off, and thereby proceeded to crash into another airplane on the runway and kill 583 persons on both planes. *Report of the Secretary of Civil Aviation, Spain* (Oct. 1978), *reprinted in* Aircraft Accident Digest (ICAO Circular 153-AN/56, 22-68).

In absolute and percentage numbers, car accidents far outnumber airplane accidents. In 1998, 21.3 million drivers were involved in motor vehicle accidents in the United States. *See* 2000 World Almanac 895 (1999) (citing National Safety Council). To ameliorate injuries and minimize deaths, effective communication among numerous strangers after an accident is essential. These communications include immediately directing traffic around the accident, discussing the situation with police and paramedics, exchanging information among those involved in the accident, and making arrangements for removing the vehicles and passengers.

The lower court attached great significance to the fact that Alabama has made some accommodations for the deaf and illiterate in its driving exams. But these kind-hearted gestures should not be construed as obliging the state to make every other possible accommodation. The deaf and illiterate are still capable of communicating in English and, therefore, allowing them to drive is consistent with the principle that English is a necessity for driving. If an illiterate person has an accident, or is stopped by a cop, he can still explain himself orally in English. Likewise, a deaf person can communicate in written English. Moreover, the deaf are incapable of hearing while the non-English speakers are capable of learning basic English. If a policeman stops a driver who does not speak English, the driver may not even understand why he has been stopped, and the officer may have no appropriate way of dealing with the problem.

Allowing a Tower of Babel to exist in traffic situations can only result – as with airplane accidents cited above – in unnecessary safety hazards and even loss of life. Government can and should prevent this by requiring a uniform language for licensing purposes. Licensees must be able to understand basic instructions, directions, and road signs in the common language, in this case English.

D. The Federal Government Itself Requires English Proficiency as a Condition of Naturalization, and Issues of Federalism Are Not Implicated Here.

The Federal Government itself, through the Immigration and Naturalization Service ("INS"), requires use of the English language as a condition of naturalization. The State of Alabama can plainly require, as a condition of a state-conferred privilege, what the Federal Government itself requires. Issues of federalism and State determinations of language are thus not at issue here and are best left for a different case.

1. *The Federal Government Itself Requires English Proficiency as a Condition of Naturalization.*

As a condition of naturalization in the United States, the law requires the ability to read, write and speak simple words in ordinary usage in the English language, such as:

America is the land of freedom.
All United States citizens have the right to vote.
I want to become an American so I can vote.
It is important for all citizens to vote.
Many people come to America for freedom.
Many people have died for freedom.
Only Congress can declare war.
The people in the class took a citizenship test.

The President must be born in the United States.
The Statue of Liberty was a gift from France.
The stripes of the American flag are red and white.

Sample Sentences For Written English Testing, Immigration & Naturalization Service, INS Online, http://www.-ins.usdoj.gov/graphics/services/natz/natzsamp.htm (last modified Aug. 16, 2000).

Some of the potential INS questions even relate to cars: "I count the cars as they pass by the office. I drive a blue car to work. My car does not work." *Id.* Alabama can require for driver's licenses what the Federal Government already requires for naturalization. The level of difficulty of the Alabama driver's license test is no greater than that of the INS naturalization test.

2. *Issues of Federalism are Not Implicated Here.*

Federalism with respect to selection of official languages is not at issue here. As demonstrated in Part II below, principles of federalism may not allow a State to select a language other than English as its official language. For example, the Constitution imposes limits on the power of State courts to conduct proceedings or issue opinions in languages not understood by the public. *See* U.S. Const. Amend. V (guaranteeing the right to a public trial).

This case merely concerns whether a State must allow exceptions to a generally applicable law mandating use of English in government operations. As shown above, exceptions for language to a generally applicable licensing law are not required.

E. English Is Becoming the Language of the 21st Century.

Language is a means for communicating ideas, and its efficacy depends on the medium of communication as well as the idea to be communicated. An ancient pictorial language developed in the Himalayas, for example, is unlikely to be efficient in communicating over the internet. Languages using large alphabets are less advantageous for the internet than a language having an alphabet of only 26 characters. Similarly, a language relying on subtle changes in intonation of identical words in order to convey wholly different meanings is at a disadvantage in static-plagued wireless communication. Modern technology does not treat all languages equally, because the inherent structure of certain languages is better suited to certain new technologies.

English has some accidental advantages. English has the smallest alphabet of major languages, including its lack of accented, hybrid, and pictograph characters. This facilitates efficient typing, the method for communicating over the internet, and allows use of the most basic character sets. English also features easy interchangeability of nouns, verbs, and adjectives, without much variance in form for pronouns and verbs. That promotes easy communication through brief, cryptic messages, the style preferred by electronic media.

English also features a powerful pipe-like quality, such that one phrase can be cut and pasted to another phrase with ease. Foreign phrases or terms can be inserted at will into English sentences, and the English language has grown enormously from its flexibility in incorporating words and phrases from other languages. Computer-based cutting and pasting text works more efficiently in English than in many other languages, such as those using pictorial characters. This is largely happenstance, but nevertheless gives English an advantage in the internet medium. Accordingly, English has

exploded in worldwide popularity since the advent of the internet, and about 80% of the internet uses English. English is now the second most widely spoken language in the world, with only Chinese dialects spoken by more people. English is overwhelmingly the second language of choice for non-English-speaking people. *See* Barbara Wallraff, *"What Global Language?"* 286 Atlantic Monthly No. 5, at 52 (Nov. 2000) (noting, *inter alia*, that "English is the working language of the Asian trade group ASEAN" and is also "the official language of the European Central Bank").

Some languages are easier to learn than others. To a native English speaker, Spanish and French are easier to learn than Arabic or Chinese. To non-English speakers, rudimentary English is easy to learn because of its absence of genders, cases and tones (pitches), as well as its very simple verb conjugation. Learning basic English is often little more than memorizing a limited number of words.

In multilingual continental Europe, a fierce battle over language popularity appears to be ending with English emerging as the standard for the 21st century. "After trying for decades to persuade more Britons to learn their language, the Germans have given up the struggle. Instead, they are promoting English as the language of the 21st century, with lessons for children as young as six." Toby Helm, *"English is Language of Today, Germans Admit"*, London Telegraph, Apr. 6, 2000. Germany's leading newspaper, the Frankfurter Allgemeine Zeitung, now produces an eight-page English edition. That German paper declares that "English is going to be the lingua franca of the next century." *Id.* (quotations omitted). Switzerland has German, French, and Italian for its official languages, but it has recently embraced English to be taught as the second language of choice, rather than its official languages. Fiona Fleck, *"Swiss Want English as Second Language"*, London Telegraph, Oct. 29, 2000.

English improves by borrowing the best from the competition. The powerful diplomatic concept of "détente" was expressed better in French than English, so English adopted the French term. Latin often does a better job with legal and religious concepts, such as "caveat emptor" and "fiat lux," so English imported those as well. Italian is still the best for operas!

In the apolitical world of computer programming, the objective differences in programming languages are indisputable. FORTRAN has inherent advantages for doing complex calculations; LISP is superior for manipulating strings; PERL is superior for facilitating ease-of-programming; and C++ is superior for writing operating systems. Both programming languages and communicative languages consist of syntactical rules and defined terms, and the efficiency of those rules and terms depend on the subject matter and circumstances. No one would claim that the COBOL programming language is equal to these other languages, even though in theory it can be used to perform the same functions. While all men are created equal, all languages are not.

Depending on history, technology and circumstance, languages are far from equal in a given situation. Alabama police officers who pull over cars at 2 a.m. can carry out their duties better if the drivers speak at least rudimentary English. Likewise, Alabama police officers can take clearer statements after car accidents from witnesses who speak English. Alabama has the authority to require this of its drivers. The increasing use of wireless phones and even the internet in automobiles creates additional reasons to require basic English skills for Alabama drivers. Alabama's requirement of basic English skills as a prerequisite for obtaining a driver's license is thoroughly justified.

II. Neither the Constitution – Written and Applied in English—Nor Its Implementation Can Require Official Use of Any Language Other than English

The U.S. Constitution is written and implemented in English, and there is no official version in any other language. Therefore it cannot require official use of any language other than English. Title VI of the Civil Rights Act of 1964 implements the Fourteenth Amendment, and thus similarly cannot require use of any language other than English.

Our Rule of Law is based on more than 200 years of development of an enormous body of law in one language: English. Common law in the United States is built on 500 years of jurisprudence in one language: English. All major legal materials are in English, including the Declaration of Independence, the Constitution, the Federalist Papers, Presidential speeches and Congressional debates. All statutes are in English. All judicial decisions are in English. This enormous body of law cannot be translated precisely into another language without altering, even if slightly, the constitutional principles themselves. It is inconsistent with the Constitution for regions of the United States to begin mandating official languages other than English.

The vision of the Constitution is inseparable from its language. James Wilson, the only member of the Pennsylvania Ratifying Convention who had a seat at the Federal Convention, said the following in his summation at the Pennsylvania Ratifying Convention:

> As we shall become a nation, I trust that we shall also form a national character; and that this character will be adapted to the principles and genius of our system of government, as yet we possess none – our language, manners, customs, habits, and dress, depend too much upon those of other countries. Every nation in these respects should possess originality, there are

not on any part of the globe finer qualities, for forming a national character, than those possessed by the children of America. ... [In addition to a respectable national character,] I think there is strong reason to believe, that America may take the lead in literary improvements and national importance. This is a subject, which I confess, I have spent much pleasing time in considering. **That language, sir, which shall become most generally known in the civilized world, will impart great importance over the nation that shall use it. The language of the United States will, in future times, be diffused over a greater extent of country, than any other that we now know.** The French, indeed, have made laudable attempts toward establishing an [sic] universal language, but, beyond the boundaries of France, even the French language is not spoken by one in a thousand. Besides, the freedom of our country, the great improvements she has made and will make in the science of government, will induce the patriots and literati of every nation to read and understand our writings on that subject, and hence it is not improbable that she will take the lead in political knowledge.

James Wilson, *Summation Address to the Pennsylvania Ratifying Convention* (Dec. 11, 1787), *reprinted in The Debate On The Constitution – Federalist and Antifederalist Speeches, Articles, and Letters During The Struggle Over Ratification* 865-66 (Gryphon Eds. 1993) (emphasis added).

A. States Cannot Be Required to Depart from English in Their Official Documents.

Congress can no more require States to depart from English in official documents than Congress could draft an official Constitution or Declaration of Independence translated into a different language. States joined the Union based on a one-

language legal system, and States have the authority to adhere completely to that language in their official documents.

In contrast to other countries, the United States is governed by a written Rule of Law – defined and applied in English. Such terms as "freedom of speech," "due process of law," "high crimes and misdemeanors," and "common law" lack precise translations in other languages. Translation of the Constitution, or the enormous body of Supreme Court decisions construing it, into another language would create endless uncertainties and opportunities for alteration inherent in the translation process. *See, e.g.*, George Steiner, *After Babel: Aspects of Language and Translation* 428 (3d ed. 1998) (noting the impossibility of perfect translation).

Congress cannot circumvent the amendment process by promulgating the Constitution in a different language. Nor can Congress require States to depart from English in their laws and regulations. Requiring that driver's license tests be provided in languages other than English presumes the authority to require States to provide official non-English translations of the laws on which those tests are based. Congress lacks this authority to require States to depart from English.

Congress could not, for example, require through legislation that the Supreme Court begin promulgating official non-English translations of its opinions. Creating multiple translations of the same opinion would create multiple and divergent versions of the law itself. As observed by Professor Edward Sapir of the University of Chicago and later of Yale University, "No two languages are ever sufficiently similar to be considered as representing the same social reality." *See id.* at 91 (quoting D. Mandelbaum (ed.), *Selected Writings in Language, Culture and Personality by Edward Sapir* (1949)). This theory – that people who speak different languages perceive the world quite differently – became known prominently as the Sapir-Whorf hypothesis.

Our view towards individual rights and privileges is shaped by the language in which those rights and privileges are defined.

If multilingual official versions of statutes, regulations, or judicial opinions were promulgated, different lines of precedent could develop depending on which language was preferred by a judge. English common law itself implicitly presumes a single language, so that a consistent body of case law may be developed. Requiring Alabama to translate official licensing tests into other languages will inevitably result in requiring Alabama to translate statutes and judicial opinions upon which the tests are based into other languages as well.

"Government of the people, by the people, and for the people" ensures that the people have the power to require that the government speak in a common language. The people of Alabama have the authority to require that its statutes be in English – the language of the Constitution – and the people of Alabama have the authority to implement those statutes in English for official documents such as licensing tests. "We must have but one flag. We must also have but one language. That must be the language of the Declaration of Independence, of Washington's Farewell address, of Lincoln's Gettysburg speech and second inaugural. We cannot tolerate any attempt to oppose or supplant the language and culture that has come down to us from the builders of this Republic." Theodore Roosevelt, *"The Children of the Crucible"*, 14 Annals of America 1916-1928, 129, at 130 (1968).

B. Basic Constitutional Rights are Premised on One Common Language.

Out of many, one: **E Pluribus Unum**. For over two hundred years, America has been a country of one, including one common language. Many constitutional rights are built on the premise that the public understands one common

language. The right to a public trial requires that the public understand the language spoken at the trial. The right to petition the government assumes that the government and the public speak a common language. The right to see a warrant prior to allowing a search and seizure assumes that the recipient can understand the language of the agent presenting the warrant. The right to a reasoned judicial decision in court proceedings assumes that the decision is written in a language that the litigants understand.

The Constitution, including the Bill of Rights, was adopted on the assumption that there would be one language that is common to both the government and to the people. The Constitution implicitly disfavors language bifurcation that could frustrate constitutional rights to a public trial, petitioning of the government, warrants for searches and seizures, reasoned judicial opinions, and many other rights.

The court below erroneously assumed that requiring English on state licensing exams is detrimental to applicants. *See* 197 F.3d at 508 ("[T]he inability to drive a car adversely affects individuals in the form of lost economic opportunities, social services, and other quality of life pursuits."). This fails to consider the enormous offsetting economic benefits available to those who are encouraged to learn English, whether through a driver's license requirement or otherwise. While English requirements have a disparate adverse impact on those who refuse to learn rudimentary English, they have an enormously positive impact on those who comply with the requirements and then are able to enter the mainstream of American academic and economic life. *Cf. Lau v. Nichols*, 414 U.S. 563, 565 (1974) ("Teaching English to the students of Chinese ancestry who do not speak the language is one choice.").

Moreover, Alabama itself will be severely disadvantaged if all its services must be provided in languages other than English. Increasingly, Alabama needs to use new

technologies, such as web pages and wireless services, to interact with the public. For example, Alabama will inevitably develop a system for filing state tax returns online. If this court requires Alabama to simultaneously offer such services in other languages as well as English, then the state will be greatly hindered and all Alabamians will suffer. Alabama should be able to use language standards as well as technology standards in order to operate efficiently. Alabama must retain authority to publish and use standard forms, interfaces and licenses in the language of our national government: English.

C. Neither Congress Nor the Individual States Have the Authority to Establish an Official Language Other Than English.

Although a few States have accepted official use of multiple languages for some purposes, precise translation of the Constitution into a different language is not feasible. As the Spanish philosopher put it, "An idea does not pass from one language to another without change." Miguel de Unamuno, *The Tragic Sense of Life*, Author's Preface, xxxiii (J.E. Crawford Flitch transl. 1921).

Constitutional terms such as "due process of law" and "common law" lack precise equivalents in other languages. Other constitutional law terms such as "freedom of speech," "cruel and unusual punishments," and "involuntary servitude" likewise lack identical counterparts in other languages. *See* Gregory Rabassa, *"No Two Snowflakes are Alike: Translation as Metaphor"* at 1, *reprinted in* John Biguenet and Rainer Schulte, *The Craft of Translation* 1 (1989) ("[W]e should certainly not expect that a word in one language will find its equal in another."). Even a familiar phrase like "the American dream" encounters thorny problems of translation to other languages used in the Americas, where "America" does not mean the "United States." Translating key terms of

the Constitution would modify them without complying with the amendment process. Moreover, translating the 200-plus years of judicial interpretations into a different language would change their meaning. Imagine the Supreme Court being required to review lower court opinions written in a different language. That would introduce substantial translation complexities – and interference with the judicial process.

Creating an official language other than English would require translating the Constitution – and would effectively modify it without complying with its requirements for amendment. *See id.* ("[A] translation can never equal the original ...."). Neither Congress nor the individual States have this authority to modify the Constitution through translation. The Constitution can be modified only through the amendment or convention processes specified therein.

D. The Constitution Disfavors Language Balkanization.

It is axiomatic that statutory interpretation should avoid constitutional difficulties. *See, e.g., Machinists v. Street*, 367 U.S. 740, 749-750 (1961) ("Federal statutes are to be so construed as to avoid serious doubt of their constitutionality. 'When the validity of an act of the Congress is drawn in question, and even if a serious doubt of constitutionality is raised, it is a cardinal principle that this Court will first ascertain whether a construction of the statute is fairly possible by which the question may be avoided.'") (quoting *Crowell v. Benson*, 285 U.S. 22, 62 (1932)). This applies to Title VI of the Civil Rights Act of 1964 as forcefully as to any other Congressional statute. The interpretation of this statute by the court below must be reversed because it creates constitutional difficulties.

History provides many examples of how language separation leads to conflict, division, demands for separate

government, and even secession. As Abraham Lincoln put it in his famous speech to the Republican Illinois State Convention in 1858, "'A house divided against itself cannot stand.'" Roy A. Basler, 2 *Collected Works of Abraham Lincoln* 461 (1953) (quoting *Matthew* 12:25). Although Lincoln was speaking about slavery, this eternal principle holds true for language. The promotion of language balkanization leads to political separatism.

A chilling illustration of this is unfolding in nearby Quebec, Canada. Language division has led to a movement for secession by the French-speaking Quebec residents from primarily English-speaking Canada. After losing by a substantial margin in 1980, the secession movement continued to grow and nearly succeeded in its second referendum in 1995 when, by a margin of only 50.6 to 49.4 percent, voters narrowly rejected the secession of Quebec from Canada. This secession issue, driven by language differences, has disrupted Canadian politics and caused violence and economic dislocation.

1. *The Decision Below Would Promote Language Balkanization of Municipalities*

The decision below effectively deprives States of their power to require an official State language for official duties. Under the decision, each municipality could establish the language for its official business. Political elections in many regions of the country could soon be determined based on which candidate supports official use of languages other than English.

This local problem is illustrated by the Quebec secession movement. "Several municipalities have held referendums asking their constituents whether, in case of Quebec's secession, they would want to stay within an independent Quebec or would prefer to remain within Canada through a partitionist process. They have usually obtained huge

majorities in favor of the latter." Francois Crepeau, *"The Law of Quebec's Secession"*, 27 American Review of Canadian Studies 27-50 (Sept. 1997). After all, "if a part of Canada (namely Quebec) can secede, then a part of Quebec can too." *Id.* Voters inevitably want a government that speaks in their language.

If the State of Alabama cannot mandate English for its licensing tests, then it surely cannot mandate the use of English for municipal business either. Once the principle of "one country, one official language" is abandoned, as it was in the decision below, the inevitable result will be countless language and sovereignty controversies at the local level. "[T]he [prior] conception [was] Canada is one country and only the Canadian people taken as a whole have a right to self-determination, to the exclusion of any of its alleged components: au contraire, if parts of the Canadian people may lay claim to self-determination, then other parts can too, including parts of the parts." *Id.*

As Representative Bob Goodlatte of Virginia observed, "Consider this: 40 million Americans will be non-English language proficient by the year 2000." Cong. Rec. H9741 (Aug. 1, 1996). If States cannot mandate a single official language for State documents and tests, then language balkanization of America may become inevitable.

2. *Prior Economic Forces Preventing Balkanization Have Diminished, Leaving Language as the Main Catalyst*

In our nation's struggle to avoid secession, moral opposition to slavery was supplemented by powerful unifying economic forces. In Abraham Lincoln's annual address of 1862, he declared that the United States could not be broken up because it formed an indivisible economic unit, and that only its economic unity provided prosperity. Gabor S. Boritt, *Lincoln and the Economics of the American Dream* 234

(1994). Lincoln observed that, even if the United States did disintegrate over slavery, economic incentives "would, ere long, force reunion, however much of blood and treasure the separation might have cost." Roy A. Basler, 3 *Collected Works of Abraham Lincoln* 17-18, 88, 120-21 (1953-55). Earlier, Lincoln had stated the economic case against secession as follows:

> On the side of the Union, it is a struggle for maintaining in the world, that form, and substance of government, whose leading object is, to elevate the condition of men - to lift artificial weights from all shoulders - to clear the path of laudable pursuit for all -to afford all, in unfettered start, and a fair chance, in the race for life.

Roy A. Basler, 4 *Collected Works of Abraham Lincoln* 438 (1953-55).

These economic incentives for political unity, however, are now diminished in favor of a global economy and electronic commerce. Protective tariffs have been much reduced by international agreements and the "euro" is replacing national European currencies. There may be less economic reason to stay together any more. Powerful emotional and legal benefits for pockets of voters to have a government that speaks their language could now outweigh economic considerations.

As Winston Churchill observed, "This gift of a common tongue is a priceless inheritance." Winston Churchill, Speech at Harvard University (Sept. 5, 1943). The State of Alabama has a compelling interest in preserving that gift for future generations, including its requirement of English for its drivers' license tests.

CONCLUSION

For the foregoing reasons, the decision of United States Court of Appeals for the Eleventh Circuit should be reversed.

Respectfully submitted,

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